

EXHIBIT 5

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--00o--

ORACLE CORPORATION, a Delaware
Corporation; ORACLE, USA, INC.,
a Colorado Corporation, and
ORACLE INTERNATIONAL CORPORATION,
a California Corporation,

Plaintiffs,

Vs. No. 07-CV-01658-PJH (EDL)

SAP AG, a German Corporation,
SAP AMERICA, INC., a Delaware
CORPORATION, TOMORROWNOW, INC.,
a Texas Corporation, and DOES
1-50, Inclusive,

Defendants.

_____ /

VIDEOTAPED RULE 30(b)(6) DEPOSITION OF
ORACLE CORPORATION

Designee: RICHARD CUMMINS

Tuesday, September 16, 2008

Volume I, Pages 1 - 255

HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Reported By: WENDY E. ARLEN, CSR #4355, CRR, RMR
Job 412495

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 86

Page 88

Page 87

Page 89

- 1 Q. Was there a particular organization within
- 2 Oracle that was responsible for that at risk report?
- 3 A. Yeah, it was our organization.
- 11:20 4 Q. Were you particularly -- in particular
- 5 responsible for that report?
- 6 A. Yes.
- 7 Q. When did that report first commence?
- 8 A. It was in 2005.
- 11:20 9 Q. Do you recall the month?
- 10 A. It was May of 2005. May -- May or June of
- 11 2005.

23 (Pages 86 to 89)

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

<p style="text-align: right;">Page 90</p> <p>1 Q. MR. McDONELL: So the at risk reporting began 2 in May of '05, a few months after Oracle acquired 3 PeopleSoft, right? 11:21 4 A. Yes. 5 Q. What was the genesis of it? How did it get 6 started? 7 A. We had significant concern because we were 8 seeing a lot of losses or we were seeing losses to 11:22 9 TomorrowNow, and so we wanted to make sure that we 10 tracked those losses very specifically.</p>	<p style="text-align: right;">Page 92</p>
<p style="text-align: right;">Page 91</p>	<p style="text-align: right;">Page 93</p>

24 (Pages 90 to 93)

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 190		Page 192	
15:30	17 Q. MR. McDONELL: Are there any companies other 18 than the companies listed on your at risk report that 19 provide support for JD Edwards and PeopleSoft 20 products?		
15:30	21 A. The -- the way they get on that at risk 22 report is that they are reported by a sales rep. And 23 so, you know, by no means do we go out and try and 24 list everybody we could possibly find. It's those 25 are the ones that have been identified by our at risk		
Page 191		Page 193	
	1 customers.		

49 (Pages 190 to 193)

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 202

Page 204

Page 203

Page 205

8 Q. And give me the time line. When did you
15:48 9 start -- first start compiling that information?
10 A. It was roughly May or June of 2005.

52 (Pages 202 to 205)

Merrill Legal Solutions
(800) 869-9132

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 206

Page 208

?

Page 207

Page 209

12 Q. MR. McDONELL: The last report I've seen is
13 from January this year, 2008.
15:51 14 A. Okay.
15 Q. Is there any subsequent report that you're
16 aware of?
17 A. I don't believe there is.

53 (Pages 206 to 209)

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 210

Page 212

Page 211

Page 213

2 Q. So what was the purpose of the at risk
3 report?

15:55 4 A. The purpose of the at risk report was that --
5 for us to have a mechanism to report our -- what we
6 thought was our cumulative exposure to -- primarily
7 to TomorrowNow.

15:56 8 Q. Was it also exposure to other support
9 providers or other software providers like, for
10 example, SAP?

11 A. It wasn't -- it wasn't intended for customers
12 that were going to another software provider. It was
13 intended for third party support.

54 (Pages 210 to 213)

RICHARD CUMMINS September 16, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 214

Page 216

16 Q. And how was the data coming into you
17 worldwide?
18 A. It was coming in through support sales reps.
16:04 19 And so globally a support sales rep, if they came
20 across a customer that was deemed to be at risk, they
21 would submit that information into Beth Shippy.
22 Q. And how would they do that?
23 A. Via e-mail.

Page 215

Page 217

55 (Pages 214 to 217)

Merrill Legal Solutions
(800) 869-9132

CERTIFICATE OF REPORTER

I, WENDY E. ARLEN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision.

That before completion of the deposition, review of the transcript [☒] was [☐] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition nor in any way interested in the event of this cause and that I am not related to any of the parties thereto.

DATED: October 2nd, 2008

Wendy E. Arlen
WENDY E. ARLEN CSR, No. 4355

RICHARD CUMMINS September 23, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 256

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--00o--

ORACLE CORPORATION, a Delaware
Corporation; ORACLE, USA, INC.,
a Colorado Corporation, and
ORACLE INTERNATIONAL CORPORATION,
a California Corporation,

Plaintiffs,

Vs. No. 07-CV-01658-PJH (EDL)

SAP AG, a German Corporation,
SAP AMERICA, INC., a Delaware
CORPORATION, TOMORROWNOW, INC.,
a Texas Corporation, and DOES
1-50, Inclusive,

Defendants.

_____ /

VIDEOTAPED RULE 30(b)(6) DEPOSITION OF
ORACLE CORPORATION

Designee: RICHARD CUMMINS

Tuesday, September 23, 2008

Volume II, Pages 256 - 436

HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Reported By: WENDY E. ARLEN, CSR #4355, CRR, RMR
Job 412497

RICHARD CUMMINS September 23, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

	Page 269		Page 271
11	Q. So would you agree with me the best record of		
12	what the sales rep was saying was the e-mail itself		
13	because something could be lost in translation?		
10:04 14	MS. HOUSE: Objection, calls for speculation,		
15	overbroad.		
16	THE WITNESS: The information came in, Beth		
17	told me that she cut and pasted it directly from the		
18	e-mail into the database.		
10:04 19	Q. MR. McDONELL: Okay. What else did you talk		
20	to Beth Shippy about?		
21	A. We talked about the limitation of what she		
22	was given, the information came from customers as		
23	best we could get it. Customers were not, you know,		
10:04 24	customers give you what they want -- want you to		
25	have. So there's certainly limitations with that.		
	Page 270		Page 272
1	Sales reps reported this as part of their		
2	overall job. It wasn't that there was a task force		
3	or anything that -- that solely did that. So as a		
10:04 4	sales rep I would have, you know, typically a sales		
5	rep has several hundred renewals over the course of		
6	the year. So this is part of what they did in the		
7	course of their normal job. So information was only		
8	as good as what they gave her.		
10:05 9	Q. Are you trying to tell us that they didn't		
10	necessarily always give the information?		
11	A. No, I'm not saying that. I said they gave		
12	the information, but, you know, this isn't -- they		
13	didn't spend every day going back to this subset of		
10:05 14	customers or anything as part of their -- part of		
15	their daily job.		

RICHARD CUMMINS September 23, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 281

Page 283

Page 282

Page 284

20 Q. Okay. But I'm talking about on the at risk
21 reporting part of it. So the at risk reporting is
22 now part of the OKS database, right?

23 A. Right.

10 : 23 24 Q. And the source of some of that information
25 comes from the support sales reps, right?

8 (Pages 281 to 284)

RICHARD CUMMINS September 23, 2008
HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

Page 285

1 A. Yes.

Page 287

Page 286

Page 288

10:25 19 Q. There it indicates that there was a plan to
20 roll out OKS in June of '07, but that's not accurate.
21 It was actually in early '08; is that right?
22 A. That's correct.

9 (Pages 285 to 288)

CERTIFICATE OF REPORTER

I, WENDY E. ARLEN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision.

That before completion of the deposition, review of the transcript [~~X~~] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition nor in any way interested in the event of this cause and that I am not related to any of the parties thereto.

DATED: October 2nd, 2008

Wendy E Arlen
WENDY E. ARLEN CSR, No. 4355